

UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF OHIO
WESTERN DIVISION

RONALD GIBBS	:	Case No.: 1:17-cv-0245
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
MERIDIAN ROOFING CORP., et al.,	:	
	:	
Defendants.	:	

PLAINTIFF'S MOTION FOR LEAVE
TO FILE HIS AMENDED COMPLAINT *INSTANTER*

NOW COMES plaintiff Ronald Gibbs ("Gibbs"), by and through counsel, and hereby moves this Court, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, for an Order granting him leave to file his Amended Complaint *instanter*. A copy of said Amended Complaint is attached hereto and submitted herewith.

Defendants have filed a Motion to Dismiss plaintiff's Complaint based upon a stilted reading of the allegations set forth in that Complaint. Plaintiff's proposed Amended Complaint does not allege any new facts or claims, but does add the following language to clarify the nature of plaintiff's claims: (i) it adds language to ¶¶23 of Count One and ¶¶27 of Count Two to specifically allege a constructive discharge; and (ii) it separates the claims against the individually-named defendants under R.C. §4112.02(J), Holian and Kidder, in a new Count Three. These changes simply clarify Gibbs' claims challenged by defendants in their Motion to Dismiss.

Civil Rule 15(a) mandates that leave to amend "shall be freely given when justice so requires."

In the absence of any apparent or declared reason — such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure

deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendments, etc. — the leave sought should be freely given.

Forman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962); Duchon v. Cajon Co., 791 F.2d 43, 48 (6th Cir. 1986).

Here, there can be no prejudice to defendants by the allowance of the proposed amendments, as they raise no new facts or claims against defendants. And even if Count Three of the Amended Complaint is deemed to be a new claim, there is still no prejudice as the claim is brought well within the 6-year statute of limitations for actions brought under R.C. ch. 4112.99. Cosgrove v. Williamsburg of Cincinnati Mgt. Co., Inc., 70 Ohio St.3d 281, 638, N.E.2d 991. Accordingly, fairness and justice demand that Gibbs be granted leave to file his Amended Complaint *instanter*.

WHEREFORE, plaintiff Ronald Gibbs asserts that fairness and justice demand that he be granted leave to file his Amended Complaint *instanter*.

Respectfully submitted,

/s/ John H. Forg

John H. Forg (0041972)

Law Office of John H. Forg

P.O. Box 72

West Chester, Ohio 45071

(513) 379-5205

Attorney for Plaintiff

Ronald Gibbs

CERTIFICATE OF SERVICE

A copy of the foregoing Plaintiff's Motion for Leave was served upon Karl Ulrich, Sebaly, Shillito & Dyer, 1900 Kettering Tower, Dayton, Ohio 45423, by electronic mail, on this 20th day of September, 2017.

/s/ John H. Forg

John H. Forg (0041972)

Attorney for Plaintiff
Ronald Gibbs